IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

AND

IN ITS MENTAL HEALTH & INHERENT JURISDICTION

PETITION NO.142 OF 2003

In

MENTAL HEALTH PETITION NO.9 OF 2003

In

LAND ACQUISITION REFERENCE NO.58 OF 1987

In the matter of Mrs.Megal Markus Pereira of unsound mind;

And

In the matter of Land Acquisition Reference No.58 of 1987 wherein Allan D'Souza & Ors. are Claimants against Land Acquisition Officer.

Mr.Allan Sebastian D'Souza,
Mumbai Indian Inhabitant, residing
at D'Souza House, Kanjur Village,
Bhandup, Mumbai--400 078. : Petitioner

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Ms Snehal Paranjpe with Ms A.V.Mirashi i/b. M/s.Shah & Sanghvi for the petitioner.

Mr.P.V.Dhupatkar, Asstt. Govt. Pleader for S.L.O.

Mr.K.N.Gaikwad for BMC.

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WITH

M.H.A. PETITION NO.2 OF 2004

In the matter of Miss Harinakshi Mardha Kunder, physically handicapped suffering from Cerebral Palsy;

And

In the matter of sections 53 and 54 of the Mental health Act, 1987.

Smt.Sarojini A. Kunder of Bombay
Indian Inhabitant residing at
C-19, Flat No.3, Jeevan Bima Nagar,
Borivali (West), Mumbai--400 013. : Petitioner

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None present for the petitioner.

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CORAM : F.I.REBELLO & ANOOP V. MOHTA,JJ.

DATE : MARCH 20, 2006.

ORAL JUDGEMENT (Per Rebello, J.)

1. A learned single Judge of this Court in M.H. Petition No.2 of 2002 (Shri Umesh Narayan Gokhle v. Shri Ajid M.

Mankar) decided on 21.2.2002 took the view that under the provisions of the Mental Health Act, 1987 (hereinafter referred to as the "Act"), it is the City Civil Court which is the District Court within the meaning of section 2(b) of the Act.

2. This judgement was noted by another learned Judge (S.C.Dharmadhikari,J.) in Petition No.142 of 2003 In Mental Health Petition No.9 of 2003 In Land Acquisition Reference No.58 of 1987. In his order dated 6.8.2004, Dharmadhikari, J. took the view the District Court as defined under section 2(b) of the Act is the High Court in exercise of its ordinary original civil jurisdiction and referred the matter to the learned Chief Justice for assigning the matter to a larger Bench. That is how the matters are placed before us for our consideration.

3. The limited issue, therefore, is whether the City Civil Court constituted under the provisions of the Bombay City Civil Court Act, 1948 or the High Court in exercise of its ordinary original civil jurisdiction is the District Court for the purpose of the Act.

4. To consider the discussion, we may gainfully note some of the provisions of the Act which are relevant for the purpose of disposing of the issue arising herein. Section

2(b) of the Act reads as under:-

> "(b) "District Court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which the State Government may, by notification, specify as the court competent to deal with all or any of the matters specified in this Act;"

In comparison, under the provisions of the Indian Lunacy Act, 1912, District Court under section 3(3) was defined as under:-

> "3(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the presidency-towns;"

Section 53 of the Act reads as under:-

> "**53. Appointment of guardian of mentally ill person**.--(1) Where the mentally ill person is incapable of taking care of

himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf."

Section 76 of the Act reads as under:-

"76. **Appeals**.-- An appeal shall lie to the High Court from every order made by a District Court under this Chapter."

Section 96 of the Act reads as under:-

"**96. Effect of Act on other laws**.-- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall

be deemed to have no effect."

5. At this stage, we may note Clause 17 of the Letters Patent of this Court which reads as under:-

> "Clause 17. Jurisdiction as to infants and lunatics: And we do further ordain that the said High Court of Judicature at (Madras), (Bombay), Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Presidency of (Madras), (Bombay), Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents."

6. Before the Act had come into force, the law applicable was the Indian Lunacy Act, 1912. This Act came to be repealed by the Act of 1987. J.A.Patil, J. in Shri Umesh Narayan Gokhle's case took the view that the Bombay High Court was the principal Civil Court of original jurisdiction for the purpose of the Act of 1912 and as such was the District Court, but the Act of 1987 has resulted in the position undergoing a complete change

as the District Court is defined as the City Civil Court in an area where there is such Court. The learned Judge further held that the provisions of section 76 which provide for an appeal from the District Court to the High Court would further reinforce the view that the it is the City Civil Court which is the District Court for the purpose of the Act and which has jurisdiction. The learned Judge, therefore, came to the conclusion that insofar as the High court is concerned, under the Act of 1987, it only exercises appellate jurisdiction. Noting section 96 of the Act, the Court held that section 96 of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

7. S.C.Dharmadhikari,J., on the other hand, noted that the Letters Patent is traceable to an Act passed by British Parliament known as "The Indian High Courts Act, 1861", which authorises the Crown to issue Letters Patent for charters for the purpose of empowering the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay i.e. the three Presidencies. The learned Judge noted that the Letters Patent dated 20.12.1865 continues to govern the jurisdiction of the

High Court of Bombay and that Clause 11 of the Letters Patent clearly provides that the High Court of Judicature of Bombay shall exercise ordinary original civil jurisdiction within the limits prescribed. The ordinary original civil jurisdiction of the High Court has been continued by section 223 of the Government of India Act, 1935 and Article 225 of the Constitution of India. The learned Judge relied on a judgement of D.R.Dhanuka, J. in the case of re Anthony Fernandes and Ors., reported in 1993 (1) Bom.C.R. 580, that wherever the High Court has ordinary original civil jurisdiction, the High Court is deemed to be District Court for the purpose of exercise of powers under Bombay Regulation 8 of 1827. The learned Judge held that these aspects were not brought to the notice of J.A.Patil, J. The learned Judge further held that the Bombay City Civil Court Act, 1948 was never reserved for Presidential assent and, consequently, it cannot have over-riding effect on clause 17 of the Letters Patent. The learned Judge also noted that one cannot lose sight of the pecuniary limits of the City Civil Court and that if it is held to be District Court for the purpose of the Act, then irrespective of the valuation of the properties, it would have jurisdiction to entertain applications thereunder. In a given case, the value of the property may exceed its pecuniary limits and being District Court within the meaning of section

2(b), it would still have jurisdiction to receive a mental health petition even though it has no pecuniary jurisdiction. The learned Judge then observed that though it does have pecuniary limits, but its competency alone would be the decisive factor. If it was construed that the City Civil Court irrespective of its pecuniary limits would have exclusive jurisdiction under the Act, that would clearly run contrary to the provisions of the Bombay City Civil Court Act, 1948. Reliance was also placed on the judgement of the Full Bench of this Court in Romila Jaidev Shroff v. Jaidev Rajnikant Shroff (AIR 2000 Bombay 356) where the Full Bench of this Court took a view that when the High Court exercises ordinary original civil jurisdiction in relation to matters under the Family Courts Act, it would be a District Court as understood therein. The learned Judge also proceeds to hold that Letters Patent would be included in expression "any other law for the time being in force" and would be certainly covered by the expression "instrument".

8. We may at once note that the challenge to the amendment to the Bombay City Civil Court Act, 1948 by Maharashtra Act 15 of 1987 in Jamshed N. Guzdar v. State of Maharashtra [(2005) 2 SCC 591] has now been rejected by the apex Court and the power of the State Legislature to enact the law has been upheld. It may

also be noted that whether Letters Patent is an instrument or not is immaterial as it is an exercise in subordinate legislation. That legislation was protected by the provisions of Article 225 of the Constitution of India.

9. Before we proceed further in the matter, we may note the provisions of section 7 of the Bombay Civil Courts Act, 1869. Section 7 reads as under:-

> "The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure."

By Bombay Act No.XL of 1948, a Court known as the "additional Civil Court for the Greater Bombay" was constituted under section 3. Section 3 reads as under:-

> "3. The State Government may by notification in the Official Gazette, establish for the Greater Bombay a court, to be called the Bombay City Civil Court. Notwithstanding anything contained in any law, such court shall have jurisdiction to receive, try and dispose of all suits and

other proceedings of a civil nature arising within the Greater Bombay, except suits or proceedings which are cognizable--

(a) ....."

It will thus be clear that the City Civil Court is a Court constituted to try and dispose of all suits as earlier constituted upto the value of Rs.10,000/- which was amended by Maharashtra Act No.56 of 1947 for Rs.50,000/- and the sum of Rs.50,000/- has been deleted by Maharashtra Act No.15 of 1987. In other words, it has unlimited pecuniary jurisdiction, subject to the judgement in Guzdar's case (supra) whereby the amended provisions will come into force on the State Government complying with the directions as set out by the apex Court. Section 3 did not confer jurisdiction on the City Civil Court to try suits pertaining to Admiralty or Vice-Admiralty jurisdiction or as a Court having testamentary, intestate or matrimonial jurisdiction, or for the relief of insolvent debtors or under any special law other than the Letters Patent.

The Code of Civil Procedure does not define 'District Court', but section 2(4) defines "district" to mean the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called

a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court. By virtue of section 7 of the Bombay Civil Courts Act, the District Court is the Court having original civil jurisdiction in the district. The Code of Civil Procedure has recognised a District Court to include the local limits of the ordinary original civil jurisdiction of a High Court.

10. We shall firstly deal with the issue as to whether the Act of 1987 contemplates any pecuniary jurisdiction and considering that the Bombay City Civil Court presently exercises pecuniary jurisdiction upto a limit of Rs.50,000/-, subject to the Maharashtra Act 15 of 1987, would that make any difference in the definition of District Court under section 2(b) of the Act. The Civil Procedure Code for the purpose of jurisdiction principally recognises jurisdiction of a Court pertaining to subject-matter, territorial jurisdiction as also the pecuniary jurisdiction, bearing in mind the provisions of the Bombay Civil Courts Act, 1869. The Act of 1987, insofar as territorial jurisdiction is concerned, has recognised the territorial jurisdiction of the City Civil Court and the territorial jurisdiction of the District Court in matters arising within its territorial jurisdiction. Section 2(b) makes no reference to

pecuniary jurisdiction as the Act has been enacted with the object to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto. In other words, irrespective of the pecuniary jurisdiction, insofar as any cause of action pertaining to the subject-matter for which the Act has been enacted, it would be the District Court alone that would have jurisdiction to entertain proceedings, including proceedings under section 53 of the Act. In other words, jurisdiction has been conferred on the City Civil Court as the District Court in respect of the subject-matter. A careful reading, therefore, as said earlier, would indicate that the aspect of pecuniary jurisdiction will not arise in proceedings taken out under the Act of 1987. All that the Court will have to satisfy is whether it is the District Court for the area where the cause of action has arisen and the cause of action is such, that the subject-matter falls within its jurisdiction. Once these two aspects are met, then it is the District Court in the area where the cause of action has arisen which would be the competent Court to entertain proceedings under the Act of 1987.

11. Having said so, the next question which emerges is

whether any co-ordinate Bench of this Court has taken the view that would support the view, that the District Court for Greater Mumbai is the High Court exercising its ordinary original civil jurisdiction. In Raja Soap Factory v. S.P. Shantharaj (AIR 1965 SC 1449), it appears that the District Court of Mysore was closed for vacation. The suit, therefore, came to be filed in the High Court of Mysore. The issue before the apex Court was whether the High Court possesses ordinary original jurisdiction to entertain the suit arising under the provisions of the Trade and Merchandise Marks Act. The apex Court on a consideration of law held that though the High Court is at the apex of civil Courts, it possesses no original jurisdiction in matters not expressly declared within its cognizance.

In The Daily Calendar Supplying Bureau, Sivakasi v. The United Concern (AIR 1967 Madras 381), a learned Division Bench of the Madras High Court was considering as to whether that High Court under Clauses 11 and 12 of its Letters Patent was a District Court for the purpose of section 62(1) of the Copyright Act, 1957. Section 62 of the Copyright Act, 1957 confers jurisdiction on the District Court. It is in that context that the learned Division Bench took the view that the High Court would be the District Court.

In Chatrabhuj Mavji Merchant v. Smt. Sumati Morarjee (1991 (4) Bom.C.R. 289), a learned Judge of this Court was considering the issue as to whether in a suit seeking redressal for breach of trust, the same being private trust, it would be the principal Court of civil jurisdiction. It is in that context that the learned Judge came to the conclusion that reference to the principal Court in Trust Act, clearly implies that suits for breach of trust have to be instituted in and tried by the principal Court and considering that, the principal Court would be the Court having ordinary original jurisdiction and not the City Civil Court. The judgement is of no assistance in deciding the controversy in our case, considering the definition of "District Court" under section 2(b) of the Mental Health Act, 1987.

12. On a conspectus of the various judgements referred to earlier, we are clearly of the view that the issue which has arisen here, had not directly arisen in any of the cases cited before us. It is the normal rule of construction, that the Act must be read as it stands. In other words, to construe it in a literal sense. It is only in the event on a literal construction, if the object of the Act may be defeated or it leads to an absurdity or the like, then the Court would proceed to

test the legislation by using other means of interpretation. The Court will then examine in such an exercise as to what is the mischief the new Act seeks to obviate and/or depart from the old Act and such other similar means of interpretation or construction. The cardinal rule, however, is that only in the event a literal construction would lead to an absurdity or the like, would the Court adopt other methods of interpretation to resolve the conflict. In the instant case, a construction of the definition of "District Court" leaves no manner of doubt that the District Court in the area where a City Civil Court has been constituted, is the District Court and in other areas, the District Court. It may be noted that Parliament has taken note of the fact that City Civil Courts have been constituted in some areas in the country and, as such, the jurisdiction has been conferred on such Civil Courts. Whenever Parliament has chosen to confer jurisdiction on the High Court as the District Court, it is so set out. For example, section 2(e) of the Arbitration and Conciliation Act, 1996. The other relevant section which we have reproduced earlier is section 76 which confers appellate power on the High Court. Thus, the Act in respect of causes of action to be decided under the Act has notified the trial Court which would be competent to try the proceedings and, thereafter, has conferred the

power of appeal to the High Court. If the construction sought to be given on behalf of those who have canvassed the views before us that it is this Court which is the Court having ordinary original civil jurisdiction, then section 76 would be defeated. To that the argument advanced is that an appeal would lie under the Letters Patent. An appeal under Letters Patent lies if proceedings are instituted under the provisions of the Letters Patent. Section 96, considering the Central Act of 1987 has specifically made it clear that the provisions of the Act shall prevail and anything inconsistent therewith shall be deemed to have no effect. The ordinary original jurisdiction of the High Court was sought to be claimed based on the Letters Patent. Considering section 2(b) which defines a District Court, the provisions of the Letters Patent to the extent are inconsistent with the definition of District Court under the Act of 1987 and shall be deemed to have no effect. In other words, it would be the Courts as defined in the Mental Health Act, 1987 which would be the Courts competent to try the proceedings.

13. In our opinion, therefore, a conjoint reading of section 2(b) with sections 53, 76 and 96 of the Act makes it clear that District Court as defined under section 2(b) for the area for which the City Civil Court is

constituted shall be the City Civil Court to the exclusion of the High Court in the exercise of its ordinary original civil jurisdiction. We, accordingly, answer the issue by holding that the definition of "District Court" under section 2(b) of the Act of 1987 insofar as the area where the City Civil Court exercises territorial jurisdiction is the City Civil Court as constituted under section 3 of the Bombay City Civil Court Act, 1948. The reference is answered accordingly.

14. Before parting with the matter, we may mention that it is not as if in every pending proceedings before this Court, for the continuation of the proceedings in this Court that a party must necessarily move under the provisions of the Act of 1987. The Court, including this Court, entertaining a suit or proceeding which could be entertained, under the provisions of Order XXXII Rule 15 could continue the proceedings by appointing a next friend or guardian, as the case may be. What the Act of 1987 contemplates is the appointment of a permanent guardian or next friend in respect of a mentally disabled person. However, once a guardian or next friend is appointed under the Act, the mentally disabled person must sue or be sued through such next friend or guardian. Even if, therefore, this Court has no jurisdiction to entertain proceedings under the Act of 1987, any

proceedings pending before it and over which it has ordinary original civil jurisdiction, it will always be open to the parties to apply under Order XXXII for appointment of a next friend or guardian, if a next friend or a guardian has not been appointed under the Act. It would be competent then for the Court to appoint a next friend or guardian and proceed with the suit or proceedings.

15. The Registry is directed to place the matter before the learned Judge where the proceedings are pending for further steps. Reference is answered in terms of para. 13.

Sd/-

F.I. REBELLO, J.

Sd/-

ANOOP V. MOHTA, J.